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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,102	03/15/2004	Jeffrey T. Zank	062103-0501	9258

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EXAMINER	
COCKS, JOSIAH C	

ART UNIT	PAPER NUMBER
3749	

DATE MAILED: 06/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/801,102	ZANK ET AL.	
	Examiner	Art Unit	
	Josiah Cocks	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 February 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *12-59 and 62-70* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *44-58,66 and 67* is/are allowed.

6)☒ Claim(s) *12-15,18-26,29-41,59,62-65 and 68-70* is/are rejected.

7)☒ Claim(s) *16,17,27,28,42,and 43* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Receipt of applicant's amendment filed 2/16/2006 is acknowledged.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 70 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 70 requires a plurality of wells where each well has only a single fluid opening extending through a wall or floor of the well and not other fluid opening. Neither applicant's specification nor figures show or describe such an arrangement. As understood from applicant's description a "well" necessarily is open at its topmost portion. This topmost opening is properly considered a single fluid opening. All of applicant's figures and description describe at least one additional opening for the drain and/or supply. As shown, for instance in applicant's Fig. 3, this additional opening is in the bottom wall of the wells. Correction is required.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 70 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As applicant's disclosure provides no description of a well that functions as recited but includes only a single fluid opening, the claim is not considered to particularly point out and distinctly claim applicant's invention. As best can be determined applicant intended to recite that the well includes only a single additional fluid opening to the open top of the well and has been regarded as such for the purpose of an examination on the merits. Correction is required.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 12-15, 18-26, 29-41, and 59 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,313,876 to Hilger et al. ("Hilger").

Hilger discloses in the specification and figures 1-16 an invention in the same field of endeavor as applicant's invention and as described in applicant's claims 12-15, 18-26, 29-41, and 59. In particular, Hilger shows a food serving station having a first support structure (at least outer housing 12), one or more vats/wells (14), a drain manifold (24) fluidly coupled to each of the one of more wells and not fluidly coupled to any other wells, Hilger further shows a fill valve

(32) that is configured to be moveable to an open position in which the fluid flows into the manifold and from the manifold into at least one of the one or more wells (see at least col. 3, lines 38-41 and col. 9, lines 17-20).

In regard to claim least claim 12, Hilger shows an overflow assembly that includes at least weir (26) and plumbing/conduit (28). Applicant's recitation of an overflow conduit properly reads on only the conduit portion (28) of the overflow assembly. This overflow conduit (28) is arranged as described in applicant's claim in that the conduit is fluidly coupled between the drain manifold (24) and the drain (22) and this conduit portion (28) is entirely external to the one ore more wells without passing through or across a wall of the one or more wells.

In regard to at least claims 14, 15, 18-26 and 30-41, note fluid level/volume sensors (46 and 48) are arranged in the well (14) which is in fluid communication with the drain manifold (22). These sensors communicate with a processor (microprocessor controller 62, see col. 4, lines 15-26) and operate as recited to control the fill valve (32) via an actuator (i.e. control circuit) (see operation description at least cols. 5-7 and Figs. 8-16, and note specifically col. 7, lines 52-59). The sensors (46 and 48) may be positioned as desired to adjust/control the high and low levels of water sensed (see at least col. 1, lines 66-67 and col. 3, lines 51-54).

In regard to at least claims 25 and 40, the examiner notes that while the heat source (42) extends into the vat/well (14), this heat source is connected to the power supply that is connected to a control circuit located in the enclosure (44) beneath the well (14) (see at least col. 3, lines 45-50). These connections are considered to, at least in part, serve as a support for the heat source. Accordingly, the heat source is supported beneath the well as claimed.

In regard to at least claim 41, the low and high water level detector sensors/probes (46 and 48) are used to determine how much water is in the vat/well (14). This water is supplied via a fluid source connected to fill valve (32). At least blocks 222 and 226 of the water subroutine provide that when a low level/volume of water is detected the processor (32) calculates that the volume of water is less than the low level limit and activates the fill valve (see at least col. 7, lines 52-59).

In regard to at least claim 59, while outflow conduit (28) requires a port that receives weir (26) and the drain outlet (22) requires a port, the sensors of Hilger are described as merely being attached to the wall of the vat/well (24) (see col. 3, lines 51-54). These sensors are therefore not regarded as requiring a port in the wall as recited in applicant's claim. Accordingly, the arrangement of Hilger requires no more than two ports for the drain outlet overflow outlet and at least one sensor as recited.

8. Claim 70 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,839,360 to Williams ("Williams").

Williams discloses in the specification and Figs. 1-8 an invention in the same field of endeavor as applicant's invention and as described in applicant's claim 70. In particular, Williams shows a food serving station having a plurality of wells (unnumbered wells of 75, see at least Fig. 5). This plurality of wells have an open top and a single additional fluid opening in a side wall receiving the conduit for drain valve (70). Manifold (82) and the filtering system (51) are considered to be the fluid manifold as recited. This filtering portion of the system (51) provides fluid which is passed back into the wells via dispensing wand (66). The fluid manifold

(82 and 51) are connected to each of the openings and configured to be selectively connected to either the drain such that fluid may be discharged from the wells to the drain or the fluid supply such that fluid may be supplied to the wells through the manifold (see at least col. 5, lines 14-60).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 62-65, 68, and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,313,876 to Hilger et al. ("Hilger").

Hilger discloses all the limitations of claims 62-65, 68, and 69 (note discussion of Hilger above) with the exception of explicitly providing that the drain manifold is coupled to both a first and second well. Hilger does disclose two vats/wells (14 and 16). Vat (16) described as a holding vat includes an unillustrated valve and drain for disposing of water inputted to the vat. As noted above, vat/well (14) includes a drain valve (22) in fluid communication with a drain portion (24) which empties into the local sewer system (see col. 3, lines 30-32). The examiner considers that a person of ordinary skill in the art would understand that the unillustrated valve and drain of vat/well (16) would also pass into the local sewer system. The drain portion (24) and the means for passing the contents to the local sewer system may be considered the drain

manifold for the purposes of these claims. Therefore, the examiner considers that in facilitating the passage of the drained contents of each of vats/wells (14 and 16) into the local sewer system/drain manifold, both of these wells are fluidly connected to the drain manifold as recited.

11. Alternatively, claims 25 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,313,876 to Hilger et al. ("Hilger") in view of U.S. Patent No. 4,575,688 to Barbieri ("Barbieri").

Hilger is considered to disclose all the limitations of claims 25 and 40 (note discussion of Hilger above). The examiner has interpreted the limitations of these claims to merely require that the heat source be supported beneath the well and not to require any specific arrangement of the heat source itself. However, even if the limitations of applicant's claims 25 and 40 are properly considered to require that the heat source itself be located beneath the well, these limitations do not patentably distinguish applicant's invention.

The examiner notes that Hilger does not show or disclose that the heat source is located beneath the well (14).

Barbieri teaches a cooking apparatus in the same field of endeavor as both applicant's invention and Hilger. In Barbieri, the apparatus includes a well/vessel (2) containing a liquid that is heated by means of a heat source (either resistors 5 or burner, see col. 2, lines 58-59) that is provided beneath the well (2) (see figure, and col. 2, lines 40-42).

Therefore, in regard to claims 25 and 40, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the heat source location of Hilger to incorporated the location of Barbieri as locating a heat source external but adjacent the

bottom of the well is recognized in the art to desirably heat the contents of the well to the desired temperatures (see col. 1, lines 58-62 and col. 2, lines 39-42).

Allowable Subject Matter

12. Claim 44-58, 66, and 67 are allowable

Claims 16, 17, 27, 28, 42, and 43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. The following is a statement of reasons for the indication of allowable subject matter:

In regard to claim 44, the prior art does not teach or suggest the food serving station have all the recited structural elements including at least one sensor fluidly coupled to the one or more wells, the sensor having a fluid contacting portion external to the one ore more wells and is configured to identify a volume of fluid within the wells and the fill valve opens and closes in response to the identified fluid volume.

Claims 45-58, 66, and 67 are allowable as being dependent, either directly or indirectly, on allowable claim 44.

In regard to claim 16, the prior art does not teach or suggest the food serving station having the structural elements recites in claims 12, 13, and 14 in combination with the limitation of claim 16 that the at least one sensor has a sensing portion configured to contact fluid contained by the station only wherein the sensing portion is external to the one or more wells.

Claim 17 is allowable as being dependent upon allowable claim 16.

In regard to claim 27, the prior art does not teach or suggest the food serving station having the structural elements recites in claims 12 and 26 in combination with the limitation of claim 27 that the processor is configured to calculated the volume of fluid within the one or more wells additionally based upon an estimated or sensed rate of evaporation of the fluid.

Claim 28 is allowable as being dependent upon allowable claim 27.

In regard to claim 42, the prior art does not teach or suggest the food serving station having the structural elements recites in claims 29 and 41 in combination with the limitation of claim 42 that the processor is configured to calculated the volume of fluid within the one or more wells additionally based upon an estimated or sensed rate of evaporation of the fluid.

Claim 43 is allowable as being dependent upon allowable claim 42.

Response to Arguments

14. Applicant's arguments filed 2/16/2006 have been fully considered but they are not persuasive. The elements of applicant's claims that were asserted by applicant not to be present in the prior art (see applicant's response pp. 13-21) and not now noted above by the examiner as containing allowable subject matter have been identified by the examiner. Reference is made to the description of the contents of the applied references noted above.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg, can be reached at (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jcc
May 25, 2006

JOSIAH COCKS
PRIMARY EXAMINER
ART UNIT 3749